

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

PARADISE UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2010100642

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On October 8, 2010 Christian M. Knox, attorney, filed a Due Process Hearing Request¹ (complaint) on behalf of Parent and Student (Student) naming the Paradise Unified School District (District).

On October 22, 2010, Jessi Carriger, attorney for District, filed a Notice of Insufficiency (NOI) as to Student's complaint.

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.² The party filing the complaint is not entitled to a hearing unless the complaint meets the requirements of title 20 United States Code section 1415(b)(7)(A).

A complaint is sufficient if it contains: (1) a description of the nature of the problem of the child relating to the proposed initiation or change concerning the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education (FAPE) to the child; (2) facts relating to the problem; and (3) a proposed resolution of the problem to the extent known and available to the party at the time.³ These requirements prevent vague and confusing complaints, and promote fairness by providing the

¹ A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under title 20 United States Code section 1415(b)(7)(A).

² 20 U.S.C. § 1415(b) & (c).

³ 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

named parties with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation.⁴

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”⁵ The pleading requirements should be liberally construed in light of the broad remedial purposes of the IDEA and the relative informality of the due process hearings it authorizes.⁶ Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.⁷

DISCUSSION

The facts alleged in Student’s complaint are sufficient to put the District on notice of the issues forming the basis of the complaint. Student’s complaint identifies the issues and adequate related facts about the problem to permit District to respond to the complaint and participate in a resolution session and mediation. The two issues identified are discussed individually as follows:

Student’s first claim alleges that during the 2008-2009, 2009-2010 and 2010-2011 school years District denied Student a FAPE by: failing to offer Student appropriate placement and services to allow him to make academic progress; failing to meet its child find obligations; failing to provide Student with occupational therapy; failing to convene annual Individualized Education Program (IEP) team meetings; failing to conduct a triennial assessment; failing to provide Student with social skills training; failing to provide Student with accommodations and modifications; failing to provide Student with a health plan; failing to ensure Student’s safety; failing to provide Student with equal access to his education and failing to convene annual IEP meetings. Student sufficiently identifies the issues and related facts about the problem.

⁴ See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

⁵ Sen. Rep. No. 108-185, *supra*, at p. 34.

⁶ *Alexandra R. v. Brookline School Dist.* (D.N.H., Sept. 10, 2009, No. 06-cv-0215-JL) 2009 WL 2957991 at p.3 [nonpub. opn.]; *Escambia County Board of Educ. v. Benton* (S.D.Ala. 2005) 406 F. Supp.2d 1248, 1259-1260; *Sammons v. Polk County School Bd.* (M.D. Fla., Oct. 28, 2005, No. 8:04CV2657T24EAJ) 2005 WL 2850076 at p. 3[nonpub. opn.] ; but cf. *M.S.-G. v. Lenape Regional High School Dist.* (3d Cir. 2009) 306 Fed.Appx. 772, at p. 3[nonpub. opn.].

⁷ Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities, 71 Fed.Reg. 46540-46541, 46699 (Aug. 14, 2006).

Student's second claim alleges that the District procedurally denied Student a FAPE during the 2008-2009, 2009-2010 and 2010-2011 school years by: failing to convene annual IEP team meetings; failing to conduct a triennial assessment; and failing to convene an IEP team meeting within 30 days of his placement in a District program. Student sufficiently identifies the issues and related facts about the problem.

A complaint is required to include proposed resolutions to the problem, to the extent known and available to the party at the time.⁸ Student provides proposed resolutions of the problems to the extent known and available at the time including compensatory education, reimbursement for private tutoring, reimbursement for speech and language therapy as well as Student's need for occupational therapy, speech and language therapy, social skills assistance and academic achievement assistance.

ORDER

1. The complaint is sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).
2. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

Dated: October 27, 2010

/s/

MICHAEL G. BARTH
Administrative Law Judge
Office of Administrative Hearings

⁸ 20 U.S.C. §1415(b)(7)(A)(ii)(IV).